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University of San Diego School of Law

Volume 44, Issue 4

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February 2009

OBAMA'S UP-AND-COMING STIMULUS PACKAGE

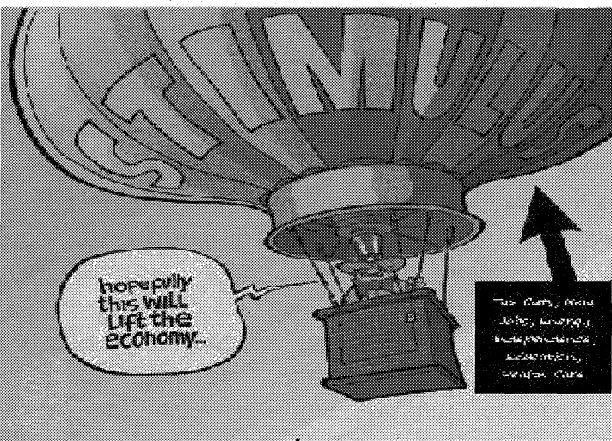
By Forrest Merithew , Staff Writer

Our country is in its worst recession since the Great Depression. A large part of the solution to the previous economic disaster was a flush of federal money for infrastructure, jobs, and domestic investing/spending. The publicized plans to raise us out of the current financial straits are similar to previous solutions since they look to invest large amounts of money back into the domestic situation. However, differences exist in the process, the focus, and the overall globalization of the modern market.

The original Great Depression, the likes of which hopefully will not be encountered again in the United States, began with "Black Thursday," the stock market crash on October 24, 1929. That was only the beginning as situations continued to worsen for the following three to four years. The Depression was exacerbated by the Dust Bowl in the Midwest, and we may have comparable complications today with the increase in violent storms possibly caused or augmented by climate change. When Franklin D. Roosevelt (FDR) took office, roughly one-third of the non-farmer workforce was unemployed, and the gross national product had decreased almost by half. Similar to our current political and economic situation, FDR came into office knowing that he had work to do and solutions to create. Within 100 days of taking office, he worked with Congress to pass "New Deal" legislation with the goal of pulling America up to the great status that it once held and ensure its place there.

The New Deal program, which started with the creation of agencies to promote domestic spending and development, increased financial responsibility within the government and industries which it monitored, brought modern advantages to many rural communities, and created numerous jobs for the unemployed masses. Once these changes became visible, FDR worked to prevent a repeat occurrence of such a disaster in the future with the creation of the Social Security System and unemployment insurance. All of the agencies, programs, and legislation helped improve the situation, but the country was in such dire straits that it was not until defense spending that began with the start of World War II that the scars began to heal.

While most believe that FDR's plans assisted - if not carried -- the United States back towards the top, there are critics. Two UCLA economists believe that the more extreme anti-competition



and pro-labor measures in the New Deal plan were part of the reason that it took until World War II before the economy reached pre-Depression levels. However, there is the very real fact that many of those programs and associations created in the New Deal package have continued to play instrumental roles in the nation's commerce.

Fortunately, our current situation is not as dire as the original Great Depression, but the population needs to realize that we are in a recession, one that will continue to affect investing, jobs, and modern life for years to come. In fact, this is the closest we have come to the Great Depression and what FDR worked so hard to prevent. There can never be one magic cure, but such complex and foundational problems require a myriad of ideas and solutions.

Just as FDR realized the challenge before he came into office, Obama is already conversing with past leaders and other strong thinkers about how to combat our current situation. The first publicized idea is a large financial assistance package -- the economic stimulus package in the approximate amount of \$825 billion. The plan is to start the recovery with an initial \$75 billion in relief through immediate tax cuts, insurance coverage increases, and bonuses.

The plan does not create new agencies and subsidies like the New Deal program, but hosts more of a plethora of domestic investment paired with a change in tax structure. First, the incoming administration has requested that municipalities and domestic governments submit ideas, goals, and funding requests to be included within the package. This will hopefully provide more accountability with the funds disbursement and usage than has been apparent in the recent past. Once the requests are compiled, there will be legislative cabinets that consider the ideas and choose which ones would be economically wise

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PROSECUTING BUSH

By Peter Stockburger Staff Writer

What do John Conyers, the Chairman of the House Judiciary Committee, Nancy Pelosi, the Speaker of the House, and Manfred Nowak, the United Nations Special Rapporteur on Torture, all have in common? They all want to prosecute members of the Bush Administration for acts of torture. There is just one problem: it's most likely neither politically nor legally feasible.

On January 21st, 2009, Manfred Nowak, the United Nations Special Rapporteur on Torture, urged the United States to pursue former President Bush and former Defense Secretary Donald Rumsfeld on charges that they authorized torture and other harsh interrogation techniques. According to Nowak, "[j]udicially speaking, the United States has a clear obligation" to bring these proceedings against Bush and Rumsfeld: "[w]e have all these documents that are now publically available that prove that these methods of interrogation were intentionally ordered by Rumsfeld," against detainees at the US prison facility in Guantanamo Bay, Cuba. A bipartisan Senate report released in December 2008 found that Rumsfeld "bore major responsibility" for abuses committed at Guantanamo Bay, Abu Ghraib and other military detention centers. In early January 2009, a Bush administration officially overseeing trials at Guantanamo Bay said that Rumsfeld approved the torture of one particular detainee. Indeed, President Bush himself said last year that he was aware of his advisers' discussions on torture and recently admitted that he personally authorized waterboarding Kalid Sheik Muhammad.

Because torture is forbidden under both federal and customary international law, there would be two tracks upon which possible prosecution could proceed. In fact, the prohibition against torture has reached the level of a jus cogens principle -- that is a binding international principle upon all States, regardless of their position, and does not permit derogation under any circumstances. This also provides every nation in the world the universal jurisdiction to prosecute alleged acts of torture. Thus, if torture is indeed illegal and prosecutable under both domestic and international law, why hasn't there been any

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MOOT COURT BOARD LAUNCHES ANNUAL MCLENNON COMPETITION

By Austin Evans, Staff Writer

USD School of Law's Appellate Moot Court Board launched its annual McLennon Honors Moot Court Competition January 16 with one of its highest competitor turnouts. In the coming weeks, 110 students will face off in the school's largest intramural moot court tournament.

"This is the highest we've had," commented Professor Michael Devitt, tournament faculty advisor, referencing the number of students registered to compete in late February and early March. The student competitors will each write a brief covering the assigned problem, which this year focuses on religion and the Constitution. Following the brief writing, competitors will argue the merits of the case before volunteer attorneys, ultimately concluding in a single-elimination tournament before a panel of distinguished judges.

Despite the expected high level of competition among the participants, "There can only be one," noted Appellate Moot Court Board chair Alex Lowder. The tournament concludes with an overall winner and awards for best briefs and best oralists.

Endowed by Professor Devitt and his family, the tournament itself started in 2001 to honor Professor Devitt's longtime family friend and colleague, Paul A. McLennon, Sr. While earning academic credit, the tournament provides competitors a unique opportunity to develop written and oral advocacy.

Devitt credits the tournament's success to the support of the entire School of Law community. "Dean Cole and the faculty are unbelievable supporters of the tournament with their time, energy and resources." As the competitors prepare their briefs and arguments, they will participate in panel discussions with USD faculty and outside notables discussing the legal intricacies of the problem.

While participation in the tournament is open only to the upper classes, involvement from first-year students is valuable to both the tournament and the moot court organization.

"Last year, we had 91 1L's apply to be on the [Moot Court] Associate Board," noted tournament co-coordinator Douglas Wacker. With first-year students able to participate in the tournament as bailiffs, Wacker credits this involvement with an increased interest in appellate advocacy. "It is key to showing an opportunity after the first year."

While the tournament might spark interest in first-year students, their involvement also benefits the program as a whole. Wacker linked student interest with the moot court program's successes in national programs, noting, "The more people that get involved, the better the whole program gets."

The program's record supports this notion; the national team recently placed second at Emory

See Moot Court, page 4

Editor's Comment

Hello everyone,

Welcome to a new semester! Hope everyone had lots of fun and lots of rest during a wonderful winter break.

To the 3Ls – this is our last semester! It's completely unbelievable that law school is almost over. I don't know about the rest of you, but I am finding it hard to accept the fact that soon, I will no longer be a student, and will be joining the real world. Good luck to everyone with job hunts and plans for the future!

To the 2Ls – you've passed the halfway mark! Believe it or not, one day you will actually be done, and actually be kind of sad about it.

To the 1Ls – if you didn't get great grades last semester, don't let it discourage you. The first semester is all about transitioning and learning from your mistakes. It is not always a reflection of how well you will do in the rest of law school. And if you did get great grades, don't let it get to your head. The rest of your class *will* learn from last semester and *will* do better, so don't think you can coast this semester (speaking from personal experience.)

Enjoy the first issue of 2009!

Jenn Chou
Editor-in-chief



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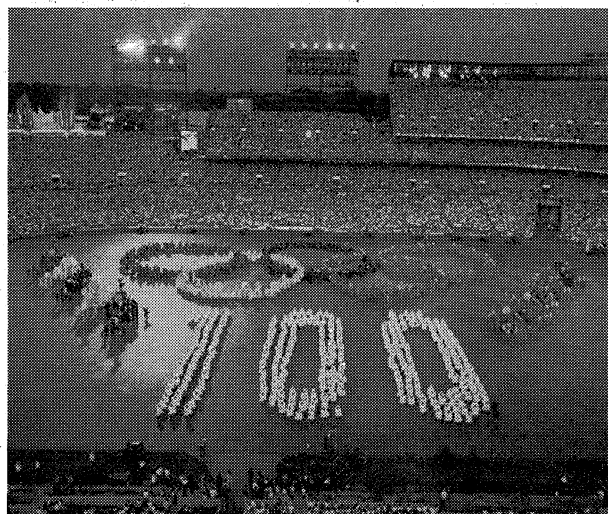
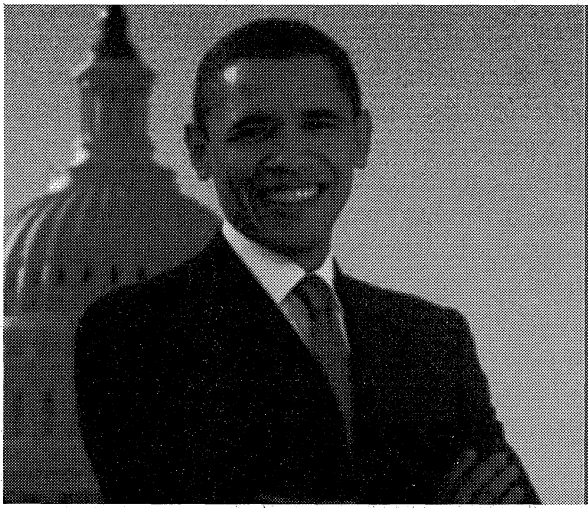
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WAS 2008 THAT BAD?

By Austin Evans, Staff Writer



I must start this off with a few caveats. I do not have a mortgage, do not invest money in anything substantial and the most valuable thing I own is a CD case full of West Wing DVDs—counting sentimental value, of course. That said, I am in the small minority that thinks 2008 was not that bad of a year. While most of the year had the sharp bite of bottom shelf tequila, there were plenty of refreshing, lime-flavored moments to help us forget about the world falling apart at the seams.

First and foremost, we elected a black President. Suck it, Jim Crow

Even though this election was over in June, the fact that a majority of Americans voted for someone who, just forty years ago, would have faced fire hoses or worse shows just how far this country has come. Beyond race, Barack Obama's campaign beat a new path for elections, developing a large turnout of young voters while also capitalizing on small, individual donations. As someone who appreciates an improved democratic system, the tone Obama's campaign set could very well open the election process to levels previously unseen in this country.

Despite the horrible year economically, Obama's feat will have a permanent effect on American history. While the mortgage bubble will heal and the market will correct itself, the accomplishment Obama achieved will make this society more open and socially conscious, and this change, I believe, will start an era of social progression.

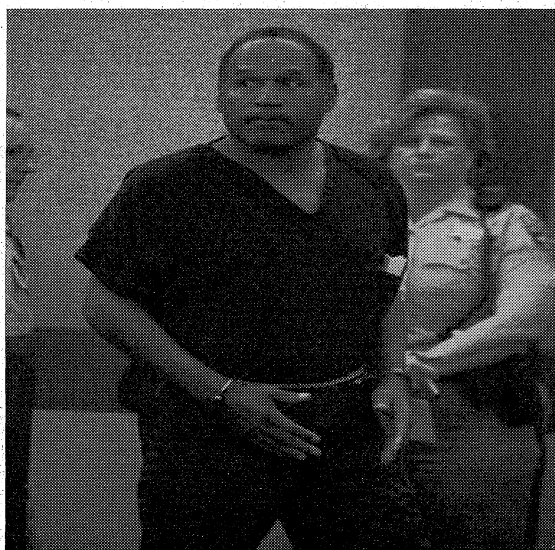
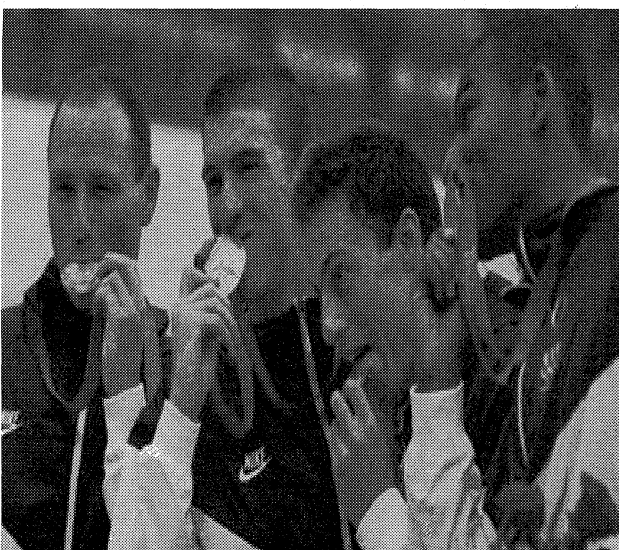
Secondly, China hosted a kickass Olympics. While I'm a five-ring nut, the Olympics are an amazing time for us as a nation and as a global community. Not only do we get to unite in the spirit of peace and sportsmanship, we get to destroy other countries at something that doesn't involve Tomahawk missiles.

As a swimmer, soccer player and track runner, my sports are only popular once every four years. You football meatheads and basketball tall guys get your finals every year; just let me enjoy the week and a half when people know the difference between a butterfly and breaststroke.

Besides my moments of glory, the games showcased the best of American athletic talent, from Phelps to the Williamses. We're all proud of our home team, and, in my opinion, these athletes represent the pinnacle of dedication and passion that you don't see in professional sports. As we reminisce about these games, let's look forward to further excitement in 2012—and hopefully a Chicago games in 2016.

To close out the year, recall these chuckle inducing moments, and here's to an amazing 2009.

- According to recent reports, the best place to keep your faux Bigfoot carcass fresh is your grandma's basement freezer chest.
- O.J. is sentenced. A nationwide lack of sympathy ensues.
- Chickens > Gays (apparently)
- While the housing market is falling, a mere \$500,000 could have bought you a decent Senate office in Northeast DC.
- President Bush would be a good addition to your dodgeball team, provided the big red balls are replaced with reporters' shoes.
- As if a leap day wasn't enough, scientists had to go ahead and extend 2008 by yet another second. You would have thought paying it forward to 2009 would have been just fine.



WELCOME BACK FROM YOUR SBA PRESIDENT



Marshall Skaletsky, SBA President

Hello Torero Law Students and fellow SBA members! I hope you all had a wonderful winter break and I welcome you back to the new semester. For the 1Ls, you got your feet wet last semester and are embarking on another interesting journey through your law school career. For the 2Ls, you are now more than halfway done and many of you are in the midst of experiencing the McLennon Moot Court tradition. For the 3Ls, we are nearing graduation and you are probably on the beach somewhere soaking up the sunshine!

I am proud to say that last semester was a smashing success in the SBA world and hope that everyone enjoyed the plethora of events, mixers, guest speakers, bar reviews and the like that was available. We started a campaign last semester to couple SBA support with outside sponsorship drives so that the maximum amount of events could take place. Because of that campaign's success and with the help from SBA, we had the most events for the most clubs on campus in recent USD Law memory! That said, we also have a ton of exciting things for this semester! By the time you are reading this, our spring semester Book Exchange has completed and you should be proud to know that we sold approximately \$40,000 this year! Hopefully you had a chance to save money on buying Book Exchange books and make money in selling Book Exchange books! Special thanks to Chuck Billinger, Austin Evans and Lee De Los Reyes for working so hard to make this year's Book Exchange technologically and logistically better than before! Furthermore, we have many SBA events that are scheduled for this semester, including a new and improved Barristers Ball on February 20th at the Dana Hotel in Mission Bay, which is being organized by our amazing Social Chairs Minh Ta and Laura Heyne along with our fantastic Vice President Sherlin Tung. Also, please keep your eye out for the 1st annual "Mixer on the Sea" in March where USD Law will dominate Mission Bay on an awesome ferry with music, dancing, drinks, and mucho fun times to culminate SBA campaign week!

Further, the USD Law Graduation Party will be in May and will be open to all students to enjoy the festivities downtown with your 3L friends before they start bar preparation. Most importantly, we also will have a variety of events on campus this semester that allows all students to explore new things and find your niche. Some of these include the ABA/SBA 9th circuit law leadership summit at the Degheri Center, a plethora of guest speaker events through our SBA organizations and the alumni board (including the alumni careers in the law and mock interview programs), the state of the school address, new and exciting bar reviews, and the new Barbri pre-bar prep sessions for 3Ls. I am personally excited to be back this semester working with everyone on all that is scheduled and hope to see you out at some of these events!



From Economics, page 1

to invest in, and therefore include, in the package.

One of the main industries that the Obama administration wishes to invest in is new energy sources -- in the hopes that this will not only create domestic jobs and future technologies, which could produce revenue worldwide, but also decrease the monies going out to other countries to purchase our current energy sources. The idea, therefore, is to create new energy sources while increasing the efficiency of those we have in place.

Another location for stimulus funds is our flailing health care industry. \$144.4 billion has been allocated for healthcare, including \$87 billion for states to help fund Medicaid and \$27 billion for other provisions. There are also plans to put approximately \$30 billion towards greater health insurance coverage under COBRA. One of the health care investments of great interest and discussion is \$20 billion for a complete electronic healthcare records system by 2014. This should increase efficiency by providing us with greater coverage and quicker results.

Tax cuts comprise approximately 40 percent or \$300 billion of the current economic stimulus plan. The people assisting Obama with the plan say that desired cuts are based on historical and empirical evidence of what works, not ideology. The cuts start with a direct \$500 per worker cut, known as the Making Work Payroll tax credit. Businesses will get breaks under the "new jobs credit" and expanded allowances for small business write-off expenditures. These credits will be followed by changes in the general domestic tax structure. Obama has discussed plans, but has not settled on, an actual income cap for lowering or leaving unchanged tax levels for the lower and middle class (below approximately \$200,000 a year) while increasing, by a small percentage, taxes for those that make over \$200,000 annually.

The main spirit of the plan parallels the ideas proposed by FDR over six decades ago: to create jobs in infrastructure, public structure and public works, the arts, and technology in order to increase gross national product and domestic spending. However, since it is an open request plan from many sources, the discretion of the legislators reviewing the funding options could make or break the package. Finally, we cannot only rely on the government, but should realize how as individuals we can be more efficient, especially in reuse, and pursue smarter spending -- working together toward a common goal.



House Speaker, Nancy Pelosi and Majority Leader Steny Hoyer at a news conference about the economic stimulus package

From Moot Court, page 2

University's Civil Rights and Liberties tournament.

Competitors will submit briefs for review by February 11 and participate in the preliminary round of oral arguments at the Hall of Justice from February 23 to 26. The single-elimination tournament of the top 32 competitors begins February 27 and concludes with the final round on March 4 at the Institute for Peace and Justice. All arguments are open to the public.

Non-competing students interested in serving as bailiffs should contact the Moot Court Board directly.

INTERVIEW WITH SCLR WRITER - LIZ MALCOLM

By Ashley Hirano, Staff Writer

For our third installment of San Diego Law Review and Motions' interviews with our brilliant student-authors, we talk to Elizabeth Anne Malcom, better known as Liz, about her comment.

Liz, who hails from San Diego and is a UC Santa Barbara grad, wrote her comment: "Looking and Feeling Your Best": A Comprehensive Approach to Groom and Dress Policies Under Title VII, soon to be published in the San Diego Law Review.

Why did you pick the comment topic that you did?

I was inspired by some of the labor and employment work I did while clerking at the US Attorney's Office during the summer after my first year of law school. My awesome boss, AUSA Cindy Cipriani, involved me in a Title VII sex discrimination/retaliation case that I found interesting, which motivated me to find a controversial topic in a related area.

So what has been the best part of being published?

Being recognized by my peers for the many hours of work I put into my comment.

And the worst part?

Never feeling "done" with the comment; the more I work on it, the more work I feel needs to be done!

Now for the other questions:

Any pets?

The cutest boxer in the world, Bella (see picture).

Best five movies ever made?

Yikes, I can't even think of five movies I've seen... But I really liked "V for Vendetta."

Favorite class in law school and why?

PR, because Professor Strong taught it, and I like reading crazy cases about corrupt attorneys.

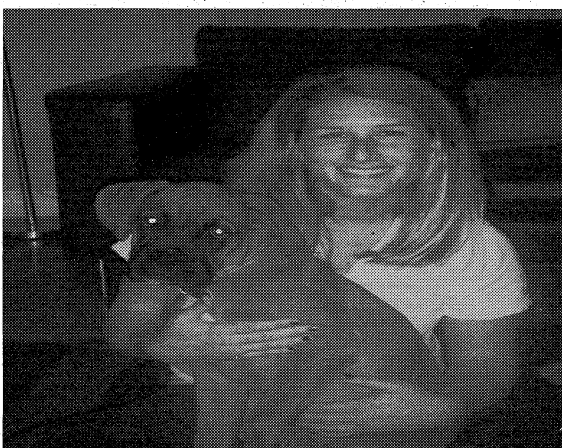
Alright Liz, what's your biggest nerd moment?

It happens twice a year. I check my grades obsessively, several times a day, starting with the first day after my last final, even though I know nothing will be posted for weeks. I'm guessing this is a common affliction among my classmates.

If you could do it all over again, would you do anything differently?

God, no. Just the thought of researching a new topic is exhausting.

Thanks for sitting down with San Diego Law Review and Motions to meet the student authors among us. Stay tuned for more talented published student-authors!



Elizabeth Malcolm and Bella

ICC CHALLENGES

By Mary Elizabeth Grant, Staff Writer

Several challenges currently facing International Criminal Court (ICC) could undermine its credibility and efficiency for years to come. The court's first trial opened under a wave of controversy. Issues of disclosure almost led to the release of the court's first suspect. Concern over protection of witnesses and informants compromised the veracity of the testimony given by the first witness. Political pressure emphasizing a need for peace over justice is undermining the court's authority as they relate to current proceedings. How the court overcomes the challenges could greatly impact the ICC's international authority.

In March 2004, The Democratic Republic of Congo (DRC) asked the ICC to investigate war crimes committed in the country since the enactment of the Rome Statute. The court issued warrants against Thomas Lubanga and three other warlords in March 2006. Lubanga was the first suspect charged by the ICC to be apprehended and held in custody at the Hague. Lubanga is charged with recruiting and using children under the age of 15 to fight. Lubanga headed the militia group, UPC, who waged war against an ethnic group, the Lendu, over gold and mining rights in the Ituri region of DRC. During the five year conflict, 30,000 children were used by numerous parties in the conflict to pillage, rape, mutilate, and kill civilians. 60,000 people lost their lives during the conflict.

The trial against Lubanga was due to start in June 2008 but was almost derailed when the court ordered Lubanga released because his right to a fair trial had been violated. The prosecutor had obtained evidence from the United Nations and other sources on the condition of confidentiality. The court ruled that the prosecutor misapplied Article 54(3)(e) of the Rome Statute regarding disclosure. The court ruled that the error rendered a fair trial impossible. On appeal, the prosecutor agreed to supply the court with the confidential information. (ICC-01/04-01/06-T-94) The prosecutor has been widely criticized for acquiescing. Any promises, whether of confidentiality or protection, to potential sources of information will be viewed with skepticism about the prosecution's ability to keep its word.

Protection of witnesses and informants is an important issue in determining the effectiveness of the trial. The prosecution plans to call 34 witnesses. Nineteen of those witnesses will testify behind a screen with their voices distorted in order to protect their anonymity. The first of the witnesses, a former child soldier, testified on January 28. While he testified behind a screen and was hidden from the public gallery, he was visible to the defendant. Witnesses stated that the defendant glared at the witness while he testified. When the witness returned from a break, the witness retracted his testimony. Prosecutors immediately requested a delay in the trial in order to investigate security for witnesses who fear reprisal when they return to DRC. (<http://news.bbc.co.uk/2/hi/africa/7857230.stm>)

The recent sentence of an ICC informant to seventeen years in jail in Sudan emphasizes the need for protection of witnesses and informants if the ICC does not want its evidence gathering ability compromised. Mohammed Ibrahim was convicted of spying, criminal conspiracy, and passing on confidential military documents to the ICC about Ahmed Haroun, the state minister for humanitarian affairs. (<http://jurist.law.pitt.edu/paperchase/2009/01/sudan-man-imprisoned-for-aiding-icc-war.php>) The ICC issued an arrest warrant for Haroun in April 2007. He is charged with fifty-one counts of

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THE LORD'S RESISTANCE ARMY

By Peter Stockburger, Staff Writer

Few horror stories rival that of the Great Lakes Region of Africa. In Uganda, The Central African Republic, The Democratic Republic of The Congo and Sudan, millions have been displaced, hundreds of thousands killed, over 25,000 children kidnapped for use as sex slaves and soldiers, and a plague of atrocity has left behind a tale of astonishing suffering and massive displacement largely ignored by the international community. The group mostly responsible for this suffering is a cult-like rebel group calling itself the Lord's Resistance Army (LRA).

The LRA is a Christian guerrilla army, formed in 1986, operating mainly in northern Uganda and parts of Sudan. Recently, after failed peace talks in Uganda, the LRA has expanded its operations into The Democratic Republic of the Congo and The Central African Republic. The LRA's leader, Joseph Kony, is said to be a spiritual medium, promising his soldiers spiritual guidance and salvation in exchange for unquestioned loyalty and brutality.

At first blush, one might wonder what is so unique about a guerilla group that causes disruption and unspeakable violence in Africa. The LRA, however, is no ordinary guerilla group. The LRA is unable to recruit adults for their cause, so they primarily kidnap children for use as soldiers. Kids as young as 8 and 9 are kidnapped from villages, forced to kill one another in order to "break" their spirit, and then become foot soldiers in Kony's army. One former child soldier, for example, told the United Nations Human Rights Commission that he was forced to decapitate another child, play soccer with the head and force other younger girls, as young as 6, to masturbate with the dead boy's blood. These children are both victims and perpetrators, making reconciliation efforts with the group difficult. One particularly harrowing story is that of John Ochola:

It was in the night when I saw a number of torches flash at me. I was commanded to lie down facing the ground. As I did so, the rebels began raiding other houses around me. They arrested many - tying, and

lying the victims on the ground in three lines. People were screaming from all corners of our village. Two men were tied and forced onto the ground where their heads were joined together. The rebels tried to force me to pick up a log and hit their heads but I refused so one came for me with a knife and cut off my left ear. He accused me of being a government soldier and said that I would be finished off if I failed to smash their heads. But then, they started smashing the people's heads themselves. I was put in the middle as they smashed the people's heads.

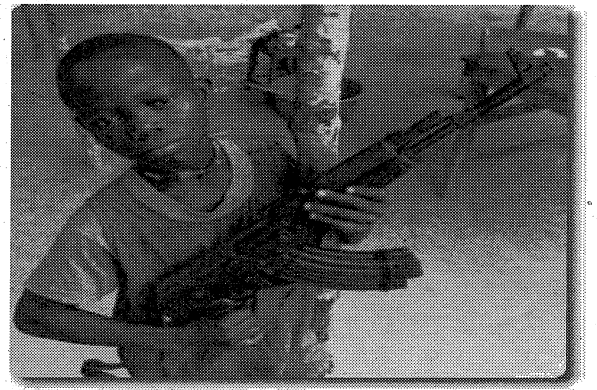
At about 0700 in the morning, they led 35 of us into the bush. About five kilometers (approximately three miles) from the scene they began taunting me, saying that I was big-headed, and because I refused to respect them would be cooked alive. They kept on beating us and they denied food or water from us. We complained saying we were hungry and thirsty. They stopped raping the women that were in our group and acted as though they were going to let us eat and drink. The ladies were forced to boil water in a big tin. Shortly after this they announced that we would eat the government soldier - supposedly, me.

For a long time, the rebels took turns at beating us men with hot metal, and raping the girls. I was already spiritually dead. They returned to me at some point and re-tied me before chopping off my lips. They then cut off my right ear and my nose. Some time later their commander Joseph Kony phoned, telling them to leave the place immediately. We were then relocated about 15km further into the bush.

I was bleeding. I could not cry anymore and for two days I couldn't drink water. The rebels debated for two days whether or not I was to be killed. They told me I was a bad omen and so must suffer. My wounds had begun to rot. The smell was so bad. But still they refused me any treatment. Then on the seventh day, because I never expected to live, I insulted their commander in the hope that in revenge he would kill me. He just ordered his soldiers to cut off my hands. They did.

That evening I remember seeing my fellow female abductees crying. One of them had been killed and another had had her breast cut off. I don't know how but by what I think was the eleventh day of being abducted I was still living. The rebels kept telling me that I would soon be dead. They picked out two of the starving, tired girls that could hardly even walk from being repeatedly raped and ordered them to take me home.

The three of us were helpless. The girls were crying,



Child soldier in Uganda

inconsolably, when some government soldiers found us following a further night spent out in the open. They took us straight to the nearest hospital where we received treatment. On reaching hospital, my wife came to see me with my parents, relatives and friends. They found it hard to see me as a human being. I was rotting, smelly and deformed. My wife could not find words to speak to me. She just felt very sick. My thoughts were filled with bitterness. I hated life and wished that I had just been killed. All I wanted was to commit suicide and die."

This story is just one of millions that have been affected by the LRA. In 2005, the International Criminal Court issued arrest warrants for the 5 leaders of the LRA, including Joseph Kony. Last year, it was reported only 2 were left alive after infighting had plagued the group. In 2006, after a failed peace attempt with the Ugandan government, the LRA fled into the Democratic Republic of Congo and, as of this past month, they attacked a village, killing four people, including a four-year-old girl and abducting a nine-year-old boy. The bishop of the small town in the DRC said the men had their hands and legs chopped off and were beaten to death as the children were forced to watch. Most recently, the LRA infiltrated the Central African Republic, leaving behind another familiar trail of atrocity and inhumanity.

Joseph Kony should be brought to Justice. The African Union, the United States, and the United Nations Security Council should make his arrest and prosecution a priority. The LRA has crossed international borders, infecting over four countries. Their actions are a direct threat to international peace and security. The Security Council, led by a renewed United States, should take a leading role in curtailing their actions and ending the atrocities that have mutilated so many. Law and justice demand no less.



Child Soldiers in Myanmar

From ICC, page 4

war crimes and crimes against humanity. President Bashir refuses to turn Haroun over to the ICC. In September 2007, he assigned Haroun to investigate human rights violations in Darfur.

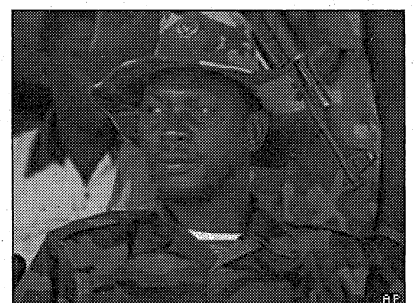
Lack of political pressure on Sudan is lending force to Bashir's flagrant disregard for the authority of the ICC. ICC chief prosecutor, Luis Moreno Ocampo, called for an arrest warrant to be issued against President Bashir for his authorization of crimes against humanity, genocide, and war crimes committed in Darfur. As the ICC investigates the charges in order to determine whether to grant the arrest warrant, four of five permanent members of the UN Security Council are supporting suspending the case against Bashir in the hope that he will change his policies regarding Darfur. (<http://news.bbc.co.uk/2/hi/africa/7739577.stm>) The dilemma though is that such action could send a message to war criminals and perpetrators of

egregious crimes against humanity that justice is negotiable and that they can commit atrocities with impunity.

The trial against Lubanga is the first trial in history to focus exclusively on the use of child soldiers as a war crime and it is the first time that victims are being allowed to participate fully in an international trial. International attention has been directed towards the increased use of children in armed conflicts. Internationally there are 250,000 child soldiers, primarily in Chad, DRC, Sudan, Uganda, Burma and Philippines. Fifty-eight countries recently signed the Paris Principles, promising to prevent the use of child soldiers and to work towards disarming underage fighters. (<http://news.bbc.co.uk/2/hi/europe/6335537.stm>) The issue is of such profound importance in DRC that the trial is being given wide media coverage. Four hundred people gathered around a giant screen in the Ituri region capital, Bunia, to observe the trial proceedings. How civilians and militants in the

region and globally perceive the proceedings is crucial in order to stop the violence and to provide some healing for the victims.

In order for war criminals around the world to realize that they can no longer enjoy impunity and that the international community will not tolerate egregious crimes, the regional and global perceptions must be that justice was served, the proceedings were fairly conducted, and witnesses and informants were protected. The outcome of the current trial will greatly impact the ICC's role in and its authority for implementing international justice.



Thomas Lubanga

Law School = High School

By Austin Evans

"This Certifies That Austin John Evans has completed the requirements for Graduation established by the Arrowhead Union High School District Board of Education and is therefore entitled to this Diploma." Given recent events at USD, I had to dust off my high school diploma cover and make sure that, indeed, I am done with high school. No more gym classes, awkward prom dates or petty backstabbing, right? Apparently, this is not the case. Living the life of a law student is almost the same as my high school days, except I am dressed a little better now and drink way more often. All of this drama has pushed me into a "Yeah, I said it" mode, and it's high time some of these circumstances and their instigators face an airing of grievances. Consider this your belated Festivus gift.

Your honor, may please the court, here is my case for law school being high school:

Exhibit A: Battle of the "Brains"

One of the most exciting days of my life as a law student came last year when Will Gee, Alex Shogan and I took the top seed in the Battle of the Brains. The other followed when we were on stage and competed to face off against the faculty. Though disappointed in the result—we had lost to the other student team made entirely of 3Ls—I figured the questions we faced were just beyond our knowledge.

However, months later, a drunken student-judge would reveal the truth: the 3L team was given easier questions. The term "lobbed softballs" may or may not have been used. I'm not going to pretend this a major form of oppression, but I continue to be seriously disappointed.

Now, this year, after again dominating the written round, our team was disqualified because Will had the right sense—and grades—to transfer, even though the three of us are able to compete in the final round. Our drunken confessor, among others, made this decision, and I'm hoping alcohol was involved there as well. This has simply turned an event rooted in the spirit of friendly competition into something that the oligarchical few control. This might help me understand why I never made homecoming court.

As disappointing as this was to us, the team replacing us is also curious: another 3L team. Although I'm not satisfied to cry out conspiracy theory, let's all see if they too get lobbed some softballs in April. The other student team of 1Ls; you're on notice.

Exhibit B: Student "Services"

My high school principal and I fought like Tom and Jerry. Yes, I suppose that makes me a mouse. Over graduation ceremonies or our own student organizations, her and I launched mental warfare that rivals freedom fights across the globe. What became the roots of my student organizing, I refused to take no for an answer simply because I was a student. This mindset carried on through undergrad and grad school.

Today, the responsiveness of our administration to student needs is lethargic. In what can only be described as avoidance, it seems our legitimate concerns are shoved aside with little or no immediate action taken. From registration woes to parking, or from our tuition dollars funding the endowment to annoying undergrads who verbally do algebra in our library during finals, the administration meets these concerns with a shoulder shrug and the same "Get over it, son," my grandfather likely gave my dad.

While I won't say our administration ignores our concerns outright, there is no fundamental way to ensure our viewpoints are heard when decisions are made. Repeatedly, I have been part of voicing a concern where the decision was already made. Had students been involved from the start, and not just in a token symbol of offering viewpoints, I am positive

problems would have been avoided all together. And if you think I'm the only one annoyed, I'm not. To support this claim, here are some quotes from my fellow classmates:

"Oh yeah, speaking of alumni funds, I'm glad the school keeps \$2,000 a year of mine at 8% unsubsidized interest."

"A final on a Saturday? That is cruel and unusual punishment."

"No smelly undergrads [in the LRC during finals], with maybe a cartoon picture of a smelly undergrad with their lame ass fraternity t-shirt."

"If I would have known how this school's administration would address our concerns, I would have weighed my other options differently [when applying]."

For now, I guess we'll have to keep hoping the SBA can do something concrete for us.

Exhibit C: Law School "Women"

(I'm not exactly sure why I kept the whole quotes thing going for this Exhibit, but oddly I think it works.)

I used to think law school girls were the cream of the crop: smart, attractive, successful and appreciative of my dry wit. I've learned to think otherwise. Law school girls, as it turns out, tend to be the same catty and insecure girls I dealt with in high school.

The child of parents who keep divorce lawyers employed—I've seen four now—I tend to favor stable, constructive relationships over the whirlwind mind-blows typical of competitive people. While I would have hoped I am not alone there, the girls that populate this school only perpetuate the philosophy of ego over caring. Here's one to wishful thinking, and here's one to my homies.

And to any innocuous law student female reading this who thinks she's off the hook...no. I have a big brush and I'm painting you all with it. I used to think there was some semblance of hope left in this school; sadly that delusion has faded faster than a Padres postseason.

While my frustration is general, there are specific cases to point out. Girls who travel in flocks similar to a Pussycat Dolls entourage. Girls who within three days tell half the school you keep condoms in your car. (Be prepared, Boy Scouts.) Girls who continue flirting with you despite the fact they made out with some dude bro with sick tats right in front of you last night. Girls who feel they have to one-up you just to be considered a coequal. Girls who have a laugh that would make a hyena say, "Damn!" Here's another one to wishful thinking.

As my closing argument, I've been in school for the past 21 years of my life now. While I still remember going to my first day of school crying my eyes out with my Ninja Turtles lunchbox in tote, that day is a long distant memory. Similarly, I was hoping that the awkwardness of my younger days ended long ago, and I'm more than annoyed that this trend continues as I earn a professional degree. Any other 25-year old has the mental development to know that pretension and veiled friendship are things for teenagers, and I hope that the majority of my fellow classmates here can exemplify that understanding.

On a side note, to those whom may be offended by this airing of grievances, I certainly have no qualms putting this knowledge out for public consumption. I invite you to respond as you wish and if you wish, and I will go so far as challenge you to do so. I will promise my best to put your responses right along side these notes.

From Prosecuting, page 1

prosecution to date? This is not clear. First, there is a possible evidentiary issue. Determining whether torture has occurred is a legal conclusion based on a factual analysis. We, the public, are not aware of specific facts. In fact, all we know of are allegations, official admissions and media reports. While these statements have the ability to inflame passions, they are not necessarily admissible in either a domestic or international court of law. Further, there are jurisdictional issues to be considered.

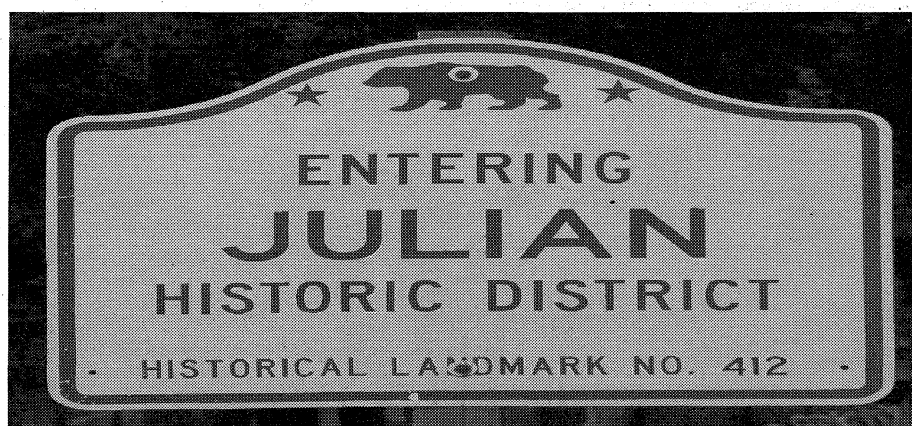
Domestically, it's unclear whether the Department of Justice has political will to bring charges under federal law against former administration officials. Not only is the evidentiary bar hard to overcome, but the politicization of any investigation will create a national division President Obama is trying to avoid. Additionally, while Congress does have the authority to establish subsidiary judicial institutions, such as a truth commissions or special tribunals, it is not clear whether there is widespread political backing for such an endeavor within Congress.

Internationally, there are several options. While most people assume the International Criminal Court (ICC) has no jurisdiction in this issue, if a United States Citizen has committed an act of torture upon the soil of a signatory state, that individual could be brought before the ICC for that act. There are, however, several limitations to this jurisdiction: (1) the acts of torture must be widespread, systematic and "gross;" and (2) if the United States has signed an Article 98 bilateral agreement with that signatory nation, there will be no ICC jurisdiction. Another avenue internationally would be for the United Nations, through the Security Council, to set up an international tribunal to try those most responsible for the wrongful acts committed under the Bush Administration. This tribunal would have jurisdiction primarily because the alleged crimes warrant universal jurisdiction. Again, however, there will be significant hurdles to this creation as the United States has a veto power in the Security Council. It's not clear whether the Obama administration will have the political will to cast such a vote. Finally, an aggrieved State could present a case, on behalf of its violated citizens, against the United States before the International Court of Justice on the allegation that the United States, as a State, violated the Torture Convention, the International Covenant on Civil and Political Rights, and the customary international legal principle prohibiting acts of torture. This type of proceeding, however, is civil and would only warrant monetary reparations.

While prosecution for torture seems to be the call of the day, the fact is there aren't many plausible avenues currently to warrant prosecution. Further, in all reality, the alleged crimes of the Bush Administration (i.e., possible waterboarding of Khaled Sheikh Mohammed) pale in comparison to the killing fields of Cambodia on trial at the Extraordinary Chambers of Cambodia, the cannibalistic dictatorship of Charles Taylor on trial at the Special Court for Sierra Leone, the slaughter of 8 thousand Muslim men and boys at Srebrenica on trial at the International Criminal Tribunal for the Former Yugoslavia, or the rape of 2,000 women on trial at the International Criminal Tribunal for Rwanda. Whether the Bush Administration will be tried for its NSA warrantless wiretapping program, the politicization of the Department of Justice, or for disclosing the identity of CIA officers is not clear. For now, those wanting to see The Decider and Rumsfeld behind bars for torture will most likely just have to wait.



Waterboarding



OUT AND ABOUT: JULIAN

By Forrest Merithew, Staff Writer

Welcome back to school. Hopefully most of you enjoyed the month or so holiday break, got in a little relaxing and family, and somewhat avoided the books. Now that you're back I'll try to help you find in-school quality distractions. Up first – the town of Julian. For anyone who's from a more rural setting and wants to reminisce or for those of you that want to get out of town for a short period, day or overnight, camping or cabins, Julian is our nearby escape.

Even though Julian is primarily known for apples: apple pie, apple fritters, and apple cider; it also hosts a plethora of flower blooms throughout spring. It's a small town immersed in the Cuyamaca and Laguna Mountains, between San Diego to the west and Anza Borrego Desert to the east. Julian's creation is rooted in the 1870s gold rush, when defeated Confederate soldiers and other folks looking for new beginnings, including Mike Julian, moved west to find their fortunes following the Civil War. The gold rush, San Diego County's one and only, lasted less than a decade, but many of the settlers decided to stay and farm the rich land and lush meadows. Now, there are many apple orchards as well as vineyards and frequently dispersed ranches. For the most part it has become more of an antiquated tourist location with history, goods, and art, and many local businesses rely on that traffic. The most popular time to visit is in the fall when fresh apples are dropping off the trees right into your favorite baked good or jug. However, you can take a mini-vacation at any point this spring, avoid the traffic and throngs of fall tourists and still enjoy some tasty treats and find what else the area has to offer. Don't expect goods to be any cheaper though.



Many folks enjoy the day trip, a simple 60-70 minute drive out Interstate 8 East and then up Highway 79 North. Even though it's surrounded by deserts, the area does have cool shaded forests and refreshing water spots. On your drive north along Highway 79 you'll pass Cuyamaca Rancho State Park, which has a number of hikes as well as mini-swimming holes, and Lake Cumayaca where you can rent a boat and gear or just drop your line around its edges. The 110 acre lake is surrounded by the State Park and stocked with over 44,000 lbs. of fish, including trout, varieties of bass, channel catfish, bluegill, and sturgeon. Every Saturday morning at 10AM there is a free fishing class at the launch ramp that suits everyone, with lessons from beginner casting to techniques and tackle for specific types. The lake also has cabins to let as well as space for camping and RVs. Information available at: <http://www.lakecuyamaca.org/>.

If you're looking for more of a camping trip Cuyamaca Rancho State Park will suit your needs. It is located about 15 minutes south of the town of Julian on Highway 79. You can reserve sites ahead of time ((800) 444-7275) or you can roll the dice and try your show-up luck (\$15 a night till May 15). Unlike the state park camping sites scattered up the coast there are generally openings, but reservations are highly recommended. There are approximately 100 miles of trails in the State Park, many of which allow mountain biking. There are several great and doable peak hikes from the camping areas, Stonewall Peak (5,700 feet) and Cuyamaca Peak (6,512 feet), and you can always dip your feet or body in one of the stream pools to cool off when you get back down the mountain. The best approach if you're planning a trip is to call information at (760) 765-0755 and explain your interests and gather applicable information. They do sell provisions in town and limited ones at the Park and Lake, but nothing is cheaper away from the city, so I would recommend for any trip packing food

See Julian, page 8

GRADES

A play by Kurt Whitman, Assistant Editor

Cast of Characters

Rhonda Rinkleschnitz: 1L at USD; sits next to Rhonda

Marvin Maloneyberg: 1L at USD; sits next to Marvin

Setting

Late January. A law school classroom at USD, 15 minutes before class starts.

The day after grades have been released.

(Marvin comes into classroom and sits next to Rhonda; Rhonda is on her laptop.)

R: Hey.

R's Mind: What were Marvin Maloneyberg's Fall 2008 grades?

M: Hey.

M's Mind: I can tell that Rhonda Rinkleschnitz wants to know my Fall 2008 grades.

R: Everyone's talking about grades today.

R's Mind: I hope Marvin Maloneyberg will talk about his grades.

M: Yeah, the grades have definitely arrived.

M's Mind: I am definitely not telling Rhonda Rinkleschnitz my grades.

R: Are you happy with your grades?

R's Mind: Please, please, Marvin . . . let me know the exact grades for each course.

M: Um, yeah, I am. I'm proud of myself.

M's Mind: Rhonda is so pathetic. It's obvious she just wants to know my grades.

R: That's Good. Man, Civ Pro was a weird final, huh?

R's Mind: I would like to know both Marvin's midterm and final grade for Civ Pro.

M: Yeah, it was—definitely a curveball.

M's Mind: Since Rhonda asked me about Civ Pro, does that mean she did well?

R: Seriously—what was up with that?

R's Mind: I'm pretty sure I did better than Marvin in Civ Pro.

M: Who knows—crazy.

M's Mind: Rhonda couldn't have done better than I did in Civ Pro . . . could she?

R: Well, anyway, glad that first semester is over. Time for Round Two.

R's Mind: Oh well, Marvin's useless. He's not going to tell me his grades.

M: Yep. No more Property ever again.

M's Mind: I want to know Rhonda's Property grade.

R: True, I actually liked that class. Great professor.

R's Mind: There is no way that Marvin did better than I did in Property.

M: Yeah, I guess so. Torts though—racehorse finals, geez.

M's Mind: Come on, Rhonda. Gimme the Torts grade. Gimme.

R: Haha. No kidding.

R's Mind: You are so pathetic. You so obviously want to know my grades.

M: Seriously . . .

M's Mind: Seriously, what is your overall GPA? I know it's not as high as mine.

R: I know.

R's Mind: I know I got better grades than Marvin—seriously.

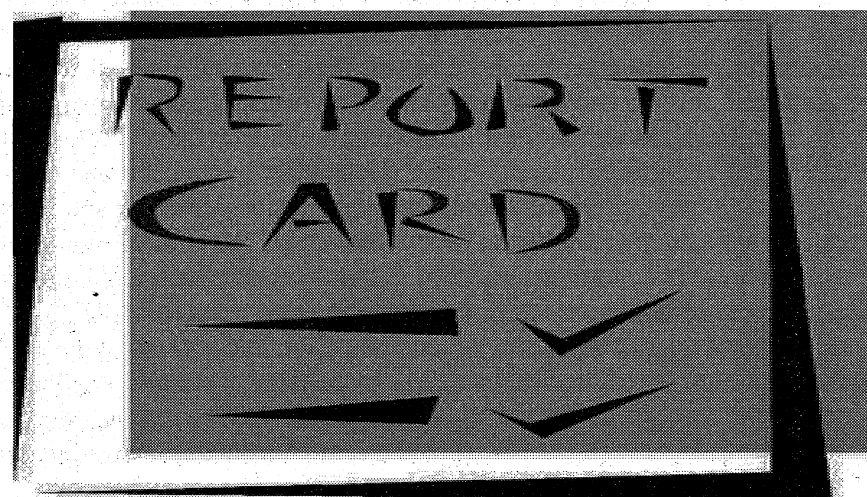
M: (takes drink from water bottle)

M's Mind: Grades. Grades. Grades.

R: (Facebook)

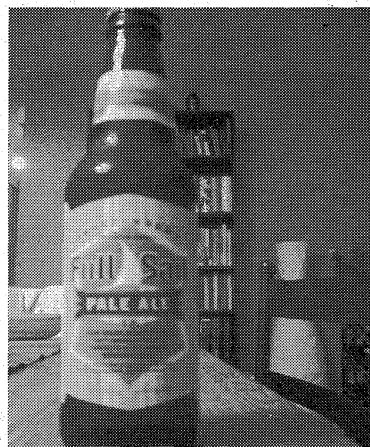
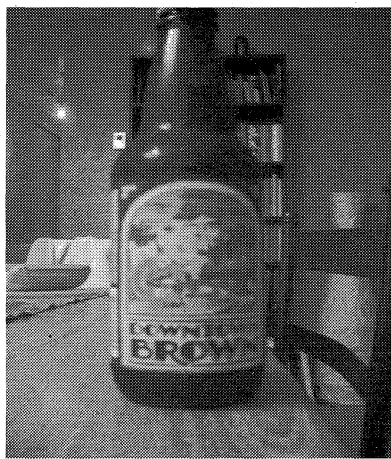
R's Mind: Grades. Grades. Grades.

(Curtain)



JENN'S BEER REVIEW

By Jenn Chou, Editor-in-chief



As much as I love wine, beer is my new favorite thing. I am not incredibly knowledgeable about beers, but I definitely have come to believe that it is an acquired taste, and that Bud Light and Coors most certainly give beer a bad name. If you're interested in trying some different beers, I have listed some good ones below. (Disclaimer: I am very very fond of dark, bitter and hoppy beers, such as India Pale Ales, so my opinion on those tend to be inflated.)

Boddingtons

This is an "English Pub Ale." It is honey-colored, very smooth, light, and refreshing. It has a creamy taste and texture. Though not a dark beer, its texture and feel are similar to that of Guinness. The similarity in the smoothness is due to the fact that both Boddingtons and Guinness are carbonated with air rather than carbon dioxide. There is a small capsule inside the beer to produce this effect. While those who like the texture find it smooth and refreshing, those who do not like it find it similar to flat beer. Pouring a Boddingtons is part of the fun of drinking it! The beer is initially very foggy and creamy, and then as the foam eases up, the beer becomes clearer and the head recedes.

Trippel

This beer is pronounced just like the word "triple" although it is tempting to think it is pronounced trip-ell. It is made by New Belgium, the same company that produces the more popular Fat Tire. Trippel has a unique nutty (hazelnuttish) and spicy flavor. If you've ever had Fat Tire, it has a similar nutty taste, but less of the roasted flavor. It is lighter in color, and has a very distinctive taste of spices.

Beamish

This is very similar to Guinness, but is slightly more reminiscent of coffee. It is a smooth and creamy stout, but leaves a slightly more acidic after taste than Guinness (which is why it tastes a bit more like coffee.)

Downtown Brown

Brewery: Lost Coast Breweries, Humboldt County, CA
This is a decent brown ale. It is dark in color, but does not

taste as heavy as a porter or stout. It has flavors of nuts, maple syrup and brown sugar, but it isn't syrupy or sweet. It finishes with a slight hint of coffee. If you have ever had New Castle, it is somewhat similar, but better, in my opinion.

Young's Double Chocolate Oatmeal Stout

This is for sure an interesting beer to try. It tastes very much like dark chocolate, with a hint of bitterness (but not bitter as in hoppy beers or IPAs) and is creamy and smooth. It is probably a beer that is meant to be shared. It's not very sweet (as a lambic might be) but it is on the heavier side, and it can be hard to drink the whole thing in one sitting.

Big Daddy IPA

Brewery: Speakeasy Ales and Lagers, San Francisco, CA
I first had it at Trax Bar, located on Haight Street in San Francisco; a lot of bars in the city offer this IPA, as it is a local brew. It is a softer IPA, but still pretty hoppy. It does not have as much bite as a lot of other IPAs. A bitterness lingers longer on the back of the tongue, more so than with other IPAs. It's definitely a good beer, though not particularly distinctive for an IPA. Generally, a solid IPA.

Dry Blackthorn Fermented Cider: "Premium Dry Cider"

I'm not really familiar with ciders, so my opinion on this one is probably neither useful nor enlightening. This was a tart and dry beer. It is a cider, it is not really sweet at all, although it is distinctly apple-flavored. It's also not very fruity, due to its dryness. I may later change my mind about this – but I am really not a big fan of ciders. They don't seem like beers at all.

Racer 5 IPA

Brewery: Bear Republic, Sonoma County, CA
This is a bitter IPA. It is very hoppy and the bitterness spreads all over the tongue. The first taste is especially crisp, and a bitter sweetness lasts a while in the mouth. It is very full and very flavorful. Smooth and bitter. 7

percent alcohol.

Mirror Pond Pale Ale

Brewery: Deschutes Brewery, Bend, Oregon
Only slightly hoppy, it has a clear and refreshing taste. It's good when it's very cold. Sometimes I think I taste a hint of citrus in there. It finishes off with a slight bitterness. 5 percent alcohol.

Dogfish Head Palo Santo Marron

Brewery: Dogfish Head Craft Brewery, Milton, Delaware

This beer is aged in Paraguayan Palo Santo wood barrels. According to the Dogfish Head brewery's site, Palo Santo means "holy tree" and this wood has been used in South American wine-making communities. It contains a whopping 12% of alcohol, but doesn't taste like it. It is nutty, spicy, and has a lingering dark chocolate taste. It is very full-flavored and rich. The makers describe it as "upbeat, with a deep, fruity essence fringed with wood and cherry," but I don't think my palate is refined enough to have noticed all that on first taste.

Full Sail Pale Ale

Brewery: Full Sail Brewing, Hood River, Oregon
This is not a particularly impressive beer. It is bitter, but without much flavor. It tastes thin, and lacks substance. It's pretty bland, especially compared with better pale ales, such as the Mirror Pond. A taste of alcohol lingers in the mouth. It can have a metallic taste like a Coors or a Bud.

Inversion IPA

Brewery: Deschutes Brewery, Bend, Oregon
I love this IPA. It's totally delish. According to its makers, it is dry-hopped for seven days, which accounts for an "added hoppy kick." This beer is good times. It is fresh, with some citrus tones, and tastes lighter than most other IPAs. 6.8 percent alcohol.

From Julian, page 7

and refreshments ahead of time, and firewood if you are planning on camping. And of course leave room for cider and pie, or even a bottle of local *vino*.

Whether you're planning a day or overnight trip there are multiple things to see and activities to do in the region. The spring is a great time to see the flowers bloom in Anza Borrego Desert State Park. To reach the desert take Highway 79 till it ends at the town of Julian, turn right on Highway 78 and follow it east down the mountains into the desert. There is a large amount of space you can cover with plenty of pull offs and short trails. If you want to get in some learning and hiking hit up the Information Center and camp grounds just west of the town of Borrego Springs (north of Highway 78) nestled at the base of the Laguna Mountains. From there you can hike to see the hidden palm oasis in Borrego Palm Canyon; just remember to take fluids with you as the temperatures can rise above a hundred degrees many days of the year. For those off-road enthusiasts Ocotillo Wells is located a little further east out Highway 79 and there are numerous 4x4 roads in the area. The Anza Borrego Desert can easily be done as part of one big day trip.

In the evening, or afternoon for those of you that may indulge your lushness more often, you can mix in a wine tasting at one or two of the many vineyards nearby (http://www.julianca.com/wine_tasting/index.htm). Stop by the Eagle Mountain or Julian Mining Company for a little history lesson and sluicing (<http://www.julianca.com/attractions/index2.htm#Gold%20Mine>). Take one or two of the many small area hikes (http://www.julianca.com/hiking_nature/index.htm). Or just relax and walk down, or carriage ride through, Main Street enjoying the art, shops, and views of the surrounding mountains. A trip east to Julian will give you a break from all those annoying ocean views, provide you the opportunity to learn a little more about San Diego region, and even leave you with a little reading/study time during a picnic outing or overnight stay in one of several Bed & Breakfast locations or many rental cabins. If anything it may break up the monotony that can occur in law school and get you out with friends, family, or significant other. Whether this sounds like something that interests you or not, get out there and enjoy yourselves and try something new at some point or another this spring. To remind you of this I will include another exciting destination in the next issue.

**SUMMER
LAW STUDY
in**

**Barcelona
Florence
London
Moscow
Dublin
Oxford
Paris**



STUDY ABROAD
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